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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (COMM) 8/2025 & CM APPL. 76038/2024(Stay)**

CNH INDUSTRIAL INDIA PVT LTDAppellant

Through: Mr. Jayant Mehta, Sr. Adv.
with Mr. Deepak Jaiswal, Mr.
Rajat and Ms. Kanishka, Advs.

versus

SURINDER PAL SINGH AND COMPANYRespondent

Through: Mr. Yashaswi S.K. Chocksey
and Mr. Ankit Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

14.01.2025

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CM APPL. 76039/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

FAO (COMM) 8/2025 & CM APPL. 76038/2024(Stay)

3. This appeal is directed against the order dated 03 December 2024 in terms of which the District Judge, Commercial Court has framed an injunction restraining the appellants from terminating the agreement dated 21 April 2022.

4. As is manifest from the order impugned, while considering the application under Section 9 of the **Arbitration and Conciliation Act, 1996¹** as made by the respondents, the Commercial Judge had taken note of the specific objection which had been taken by the appellants,

¹ Act



namely, the prayer for injunction as claimed and sought not being tenable in law in light of Section 41(e) of the **Specific Relief Act, 1963**².

5. However, the Commercial Judge, in this regard, has merely chosen to observe that the plea regarding non-maintainability of the petition in view of Section 41(e) would be an issue which would be decided at “final stage”. We find ourselves unable to countenance or sustain the view as expressed. Undisputedly, the agreement in question was inherently terminable. It is in the aforesaid context that the appellants appear to have urged that the injunction as sought would not sustain bearing in mind the plain and imperative language of Section 41(e). We bear in consideration the well settled position in law in this respect and which stands duly noticed in some detail in a decision rendered by a learned Judge of this Court in **Ghh Bumi Mining Services Pvt. Ltd. vs. Hindustan Zinc Ltd**³ and where the following pertinent observations appear explaining the well settled legal position which prevails:-

“26. In *Rajasthan Breweries Limited* (supra), an application under Section 9 of the said Act was moved seeking *ad interim* temporary injunction restraining the operation of two notices of termination. The learned Single Judge of this court rejected the application on the ground that the contracts were determinable while relying upon Section 41 read with the Section 14(1)(c), as it was then, of the Specific Relief Act, 1963. The learned Single Judge also held that the two agreements contained clauses which permitted their termination at the occurrence of any of the events envisaged thereby. Such order was challenged in appeal before the Division Bench claiming that an agreement which was determinable at the instance of either of the parties was not “in its nature determinable”. The Division Bench rejected the aforesaid submission and observed thus:—

² SRA

³ 2023 SCC OnLine Del 3753



“The facts of the present case are identical to those in aforementioned decision of the Supreme Court in as much as the agreements in the instant case are also terminable by the respondent on happening of certain events. In Indian Oil Corporation's case (supra) also agreement was terminable on happening of certain events. Question that whether termination is wrongful or not; the events have happened or not; the respondent is or is not justified in terminating the agreement are yet to be decided. There is no manner of doubt that the contracts by their nature determinable.”

.....

Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same. Consequently, there being no merit in the appeal, the same is dismissed.”

27. It was thus held that the remedy, in the event of an illegal termination, would only be to seek compensation for wrongful termination and not to maintain a claim for specific performance of the agreements. Observing that any injunction against specific performance of the agreements was statutorily prohibited, as they were determinable in nature. The order of the learned Single Judge was upheld and the appeal was dismissed.

28. In *Inter ADS Exhibition Pvt. Ltd.* (supra), it has been observed that whether the termination notice met the requirement of the contract or not and thus whether the termination was a valid termination or not would be the questions which were required to be examined and adjudicated upon by the Arbitrator. It was also



observed that since in either events, the agreement was terminable, the specific performance of the contract could not have been granted nor could any injunction be issued restraining the respondent from giving effect to the notice of termination as that would, in effect, amount to enforcement of the contract. Para 13 of the said judgment reads as under:—

“13. Whether the termination notice dated 15.03.2019, met the requirements of Article 12.4 or not and thus, whether the termination was a valid termination or not, would be questions that have to be examined and adjudicated upon by the learned Arbitrator, to be appointed by the parties to resolve their disputes. It would also be for the learned Arbitrator to reconcile Article 7.1 with the recitals in the JVA-II dated 25.10.2011, as reproduced hereinabove, limiting the agreement to four editions. Under Article 7, termination can be either mutually agreed to under Article 7.2 or at the option of either party, on the occurrence of certain events, as listed under Article 7.3, which contemplates a termination with penalty. Again, the question whether the respondent had given 30 days' time to the appellant to make good the default, duly specified in reasonable detail in the communications exchanged between the parties, is not for this court to inquire into. Suffice it is to state that in either event, the agreement was terminable and therefore, the conclusion arrived at by the learned Single Judge that specific performance of the contract could not be granted and nor could any injunction be issued restraining the respondent from giving effect to the notice dated 15.03.2019, as that would in effect amount to enforcement of the contract beyond the said date i.e. 15.03.2019, cannot be faulted.”

29. In *C. Gopal Reddy and Company* (supra), it has also been observed that when a contract is determinable and cannot be specifically enforced, no injunction against termination and enforcement of the contract can be issued. Therein, the petitioner was awarded a contract. He sought for extension of time but his request was not considered and without considering the reasons stated in the extension letter and without giving any hearing to the petitioner, the respondent Authority terminated the contract which led to filing of application under sec 9 of said Act. It was contended that the *extension request* had not been considered as per the terms and conditions of the contract. This court, in the final analysis, observed that at said stage, it was not concerned with the merits/correctness of the termination of the contract by respondent no. 1 and any remedies arising therefrom and that such questions may be raised before the parties in the course of arbitral proceedings and may be adjudicated therein. It was observed as under:—



29. Section 41 vide clause (ha) states that an injunction cannot be granted in cases where it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto.

30. Therefore, under Section 14(d) read with Section 41 of the Specific Relief Act, when a contract is determinable, and cannot be specifically enforced, no injunction against termination and enforcement of the contract can be issued.

31. As held in a plethora of judgments including *Rajasthan Breweries Ltd. v. Stroh Brewery Co.*, 2000 SCC OnLine Del 481, *Bharat Catering Corpn. v. IRCTC*, 2009 SCC OnLine Del 3434 and *Inter Ads Exhibition (P) Ltd. v. Busworld International Cooperatieve Vennootschap Met Beperkte Anasprakelijkheid*, 2020 SCC OnLine Del 351, and as recently held by a Coordinate bench of this Court in the case of, *Shubham HP Security Force (P) Ltd. v. Central Warehousing Corpn.*, (2022) 2 HCC (Del) 264 : 2022 SCC OnLine Del 739, it is a settled position in law that it is not permissible for any party to seek an injunction on the termination of an agreement in the case of a determinable contract. Considering the nature and scope of the present proceedings, such an exercise cannot be undertaken by this Court.

32. Therefore, the petitioner's prayer restraining the Termination of the Contract Agreement by Respondent No. 1, is not sustainable in law. At this stage, granting a stay of termination would necessarily entail this Court first forming an opinion, albeit a prima facie one, that the termination effected by the respondent was misconceived and contrary to the terms of the agreement.

30. In *Golden Tobacco Limited* (supra) relied upon by the petitioner, the position was little different as in that case it was specifically observed that the agreement was in perpetuity and therefore, it was not determinable in nature. Clearly, a contract of such nature could not be considered as determinable in absence of any agreement entitling the party to terminate the same without cause or default on the part of the other party. More importantly, in said case, it was also observed that whether an agreement is in its nature determinable, is required to be understood in the context of the nature of that agreement.

31. Of course, the petitioner has relied upon *Ascot Hotels and Resorts Pvt. Ltd.* (supra) in which it has been observed that if the agreement is not terminated in accordance with the clauses of the agreement, the other party was entitled to a relief of injunction. However, the situation in that case was different as those observations were given when the matter had already reached the



Arbitrator as the disputes had arisen between the parties. During such period, the contract was also terminated which resulted in filing of application seeking status quo. Such application moved under Section 17 of said Act was disposed of by the Arbitrator directing *status quo* to be maintained. It was observed by the Arbitrator that appellant had been unable to show the three consecutive defaults in the payment of license fee by the respondent as required in Clause 22.4 of the License Agreement and even the notice of termination dated did not refer to any such default. He further held that the respondent was not seeking specific performance of the agreement and was only challenging the wrongful termination of the same by the appellant. The Arbitrator relying upon the judgment of this Court in *Upma Khanna v. Tarun Sawhney* held that denial of the interim protection to the respondent would, in fact, amount to allowing the party committing the wrong to take advantage of its own neglect and default. Such order was eventually upheld by this court. However, in the present case, the termination, primarily, seems to be in synchronization with the contractual terms. Moreover, evidently, the suspension of termination herein would have automatic consequence of performance of contract, which does not seem to be permissible. The decision given by an Arbitrator under Section 17 of said Act in the peculiar facts of that case cannot be robotically and mechanically applied here while discussing an application under sec 9 of said Act, when even the Arbitrator has yet not been appointed.

32. The Specific Relief Act, 1963 was amended in the year 2018 with the objective to give impetus to the legal regime governing enforceability of contracts in India. The pre-2018 Amendment position was that specific performance of an agreement was an equitable and discretionary relief but after the 2018 Amendment, the words “specific performance of any contract may, in the discretion of the court, be enforced” in Section 10 of the Act, have been substituted with the words “specific performance of a contract shall be enforced subject to [Sections 11(2), 14 and 16 of the Act]”. Thus, once the factors mentioned in Sections 11(2), 14 and 16 of the Act are met, it is obligatory upon the courts to order specific performance of a contract. Fact, however, remains that Section 41(e) of the Act provides that an injunction cannot be granted “to prevent the breach of a contract the performance of which would not be specifically enforced”. Furthermore, Section 14(d) of the amended Act provides that a contract which is “in its nature determinable” cannot be specifically enforced. Fact remains that a contract which is “in its nature determinable” was incapable of specific performance by virtue of the erstwhile Section 14 (1) (c) continues to remain so even by virtue of the present Section 14 (d). Thus, there cannot be any gainsaying the fact that there is no straight jacket formula as such and each case has to understood in



context of its peculiarity and after appreciating the contractual terms and then it needs to be concluded whether the underlying contract is “in its nature determinable” or not. Here the contract seems determinable in nature as ***termination can take place under certain conditions***. The fact also remains that in such a situation, if the termination order is stayed, it would have obvious impact of granting specific performance of the contract.

33. Interestingly, this court in *Royal Orchids v. Kulbir Singh Kohli*, 2022 SCC OnLine Del 2519, while dealing with a Memorandum of Understanding (MoU) for redevelopment and construction of an immovable property, which did not even contain any termination clause, after applying the *Nature of Agreement Approach*, held that time was the essence of the MoU and that breach of timelines as contemplated in the MoU amounted to material breach and MoU, being a private commercial transaction, was determinable in nature. The court had also relied upon *Rajasthan Breweries*(supra) while arriving at such findings.

34. Be that as it may, the question as to whether the termination was strictly in consonance with the contractual terms or not is not to be looked into by this court, in elaborate and exhaustive manner. Suffice it to say, prima facie, there are breach-notices herein. Even if it was to be held that the termination was bad in law or contrary to the terms of the agreement or of understanding between the parties, the remedy for the petitioner would be to seek compensation for the wrongful termination and, therefore, in the garb of interim relief under Section 9 of the said Act, the petitioner cannot claim for specific performance of the Agreement. Such grant of injunction is rather expressly proscribed in a case of contract like the present one.”

6. Bearing in mind the aforesaid, we are of the considered opinion that the impugned order cannot possibly sustain. The objection taken by the appellant based on Section 41(e) read alongside Section 14(1)(d) of the SRA not only barred the Court from restraining the appellant from terminating the contract, it went to the very root of the prayer for interim injunction that was made.

7. In light of the challenge that stood raised, the Commercial Judge was clearly obliged to engage with that issue and could not have validly deferred consideration of that question. The grant of injunction in terms as framed, in any case, cannot sustain in light of the reasons



assigned hereinabove.

8. We accordingly allow the instant appeal and set aside the order dated 03 December 2024.

9. We, however, clarify that any other injunctive relief which still survives in the Section 9 petition can be independently pursued by the respondents. All rights and contentions of respective parties on merits in that respect are kept open.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 14, 2025/DR